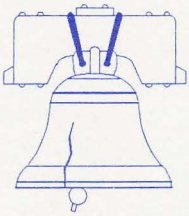

PROPERTY RIGHTS
THE FOUNDATION OF FREEDOM

THE FEUDAL NATURE OF FEDERAL REGULATIONS

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The federal abuse of property rights and the federal command and control of unfunded mandates have generated tensions, distrust and even active opposition to the federal government. These powers at the federal level were never intended by our Founding Fathers. Such power is not accountable to the people and denies unalienable property rights, which *always* leads to tyranny. We must reinstate property rights, return power to the states, the counties and the people as intended by our Constitution. Otherwise we will continue down the road to feudal tyranny, and civil unrest.

Federal Power — The Road to Tyranny

Many Americans are frustrated with unfunded mandates. What most Americans don't realize is that these unfunded mandates are merely the tip of an increasingly repressive regulatory iceberg. There is growing concern that fellow Americans are being sent to prison and property owners are being systematically stripped of their life savings and livelihoods for violating an explosion of totally arbitrary and often ludicrous regulations that the average person has no hope of understanding.

Although most Americans intensely dislike unfunded mandates, they don't understand why property owners are so upset. To them, it seems only fair that property owners do their share to protect the environment and our cultural heritage. After all don't similar types of zoning protect property values in urban and suburban areas?

In response, property owners claim they are not against protecting the environment. Rather, they are upset the government is forcing them to shoulder the cost of this protection by controlling *their* property for the so-called "public good."

The answer to these confusing issues is found in our Founding Fathers understanding of the feudal tyranny that led to the Declaration of Independence, and how unalienable property rights were *intended* to be the foundation of all other civil rights in our U.S. Constitution. Ironically, once these principles are understood, it becomes clear that the tensions over unfunded mandates and loss of property rights are both related to the same problem — usurpation by the federal government of state and local powers. Such usurpation, warned our Founders, inevitably leads to growing tyranny and the type of tension we are experiencing today.

In their recent efforts to reverse this tyrannical trend, many in Congress have been accused of rolling back 25 years of environmental protection. To the contrary, Congress is attempting to prevent the rolling back of over 200 years of freedom! By denying the concept of unalienable property rights we may be choosing a new feudalism over freedom — with devastating consequences for all Americans.

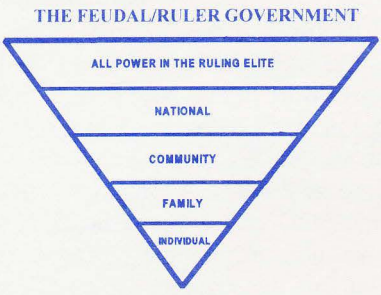
Federal and Feudal Tyranny

After breaking the feudal bondage of England, our Founders were so fearful of creating another feudal government that they severely limited the Constitutional powers of the federal government to only those pertaining to foreign relations and war. The only exceptions were the "General Welfare" and the "Interstate Commerce" clauses. The former clause was intended to ensure life, liberty and opportunity for all citizens *equally*, while the second clause was intended to *promote free commerce* between states. Neither of these two tiny clauses were intended to subvert the rest of the Constitution in order to make the

federal government the supreme regulator of America, as is the case today. So adamant were our Founders about keeping power away from the federal government that they included the Tenth Amendment to prevent expansion of federal powers, Thomas Jefferson warned,

> "*When all government…shall be drawn to Washington as the center of all power*, it will render powerless the checks provided of one government on another and will *become as venal and oppressive as the government from which we separated.*"[1]

Jefferson called this centralization of power the "feudal/ ruler" form of government. The foundation of this form of government is almost always control of property — he who controls the land (or water) controls the people. If a person cannot own unencumbered land and property to grow crops, have a business, or build a home to shelter their family, they are at the mercy of those who do hold that power.



In the Feudal/Ruler form of government, Jefferson notes the majority of the power resides with the ruling elite and is passed through several administrative levels to rule over the people. There are no property rights for the common people who only have those freedoms granted by the elite and administrators, inevitably resulting in tyranny. *(From W. Cleon Skousen.* The Making of America. *1985. Pp 45.)*

Tragically, that power is increasingly being held by the federal and sometimes state governments. How can a citizen use their First Amendment right of free speech if the government agent to whom they would speak against can deny them home, hearth and means of livelihood? Inevitably, the rights of the government are superior to those of the people with feudal/ ruler governance.

Unalienable Property Rights and the People's Law

Unalienable property rights are foundational in the protection against feudal/ruler tyranny. John Adams warned that such tyranny is the inevitable result of losing the inalienable right to own and use land unencumbered by government interference,

> "The moment that the idea is admitted into society that property is not as sacred as the Laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. *Property must be sacred or liberty cannot exist.*"[2]

James Madison not only affirmed the sacred nature of property rights, but emphatically proclaimed that the highest priority of government is to protect these unalienable rights, "Government is instituted to protect property *of every sort*…This *being the end of government*…"[3]

The underlying principle of unalienable rights is simple. Civilization is governed by certain natural laws. Violating these laws does not break natures's physical laws, but does result in man breaking himself. Sir William Blackstone and Thomas Locke, prolific writers of these foundational concepts were repeatedly quoted by our Founders during the Constitutional debates,

> "For as God, when he created matter, and endued it with a principle of mobility, established certain rules for perpetual direction of that motion; so, when he created man, and endued with free-will to conduct himself in all parts of life, he laid down certain immutable laws of human nature.... These are the eternal, *immutable laws of good and evil....*"[4] "Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws.... On the contrary, *no human legislature has power to abridge or destroy them...*"[5]

Jefferson called these natural laws "the laws of nature and of nature's God" in the Declaration of Independence. Even though they can not be "seen," these natural laws are as certain as the law of gravity. For any legislature to violate these laws is to invite tyranny upon its citizens as certainly as death results from ignorantly walking off a 1000 foot cliff.

Thomas Jefferson based our U.S. Constitution on unalienable rights and called it the *People's Law.* People are first protected by unalienable rights. Secondly they hold all power. The people then allocate power first to local government, then to state government, and finally to the federal government, with the latter having the least power of all.

Unalienable property rights were to be limited only by the 1) right of imminent domain for the public good — but only with "just compensation" as defined by the Fifth Amendment, or 2) common law concept of harm and nuisance. The latter was intended to be invoked only at the local level where zoning was under direct control of the people affected. It could only be used where definable harm to another person's health or property value could be

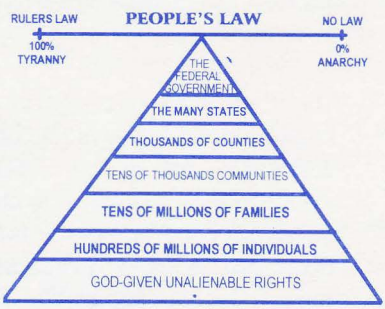
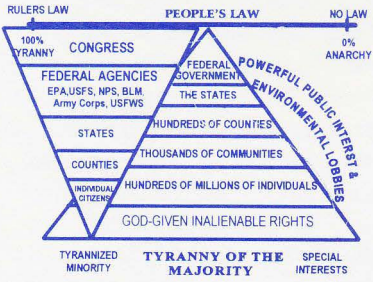


Figure 2. Jefferson asserted the People's Law reversed the tyrannical power structure of the Feudal/Ruler Government. By protecting God-given unalienable rights and placing all the power in the hands of the people themselves, those that administer are always accountable to the people they govern. Jefferson repeatedly asserted that this generalized form of government is the *only* form that guarantees freedom of the people in which a society can flourish. *(Source: W. Cleon Skousen,* The Making of America, *National Center for Constitutional Studies, Washington, DC. 1985. Pp 46.)*

demonstrated. Further loss of property rights leads to abuse.

Dangers of the "Public Good"

By misusing the concept of the so-called "public good," the multi-billion dollar environmental and public interest lobbies have convinced a constitutionally ignorant American people to pressure Congress into expanding federal powers. They are using what James Madison called the "Tyranny of the Majority". By claiming that the so-called "majority" outside a local jurisdiction have the right to intervene in local issues in the name of the "public good," the environmental lobby has convinced Congress to usurp local power by inserting federal jurisdiction into local issues. In doing so, power shifts from those who are accountable to the citizens within a jurisdiction to federal agents having essentially no accountability to any one local area. While this type of "public good" seems democratic, James Madison warns it leads to civil strife and national ruin,



The environmental lobby and other public interest groups have begun to cause a reversion to the evil feudal/ruler form of government by playing on the constitutional ignorance of the American people and lobbying for laws under the guise of the public good that weaken property rights and usurping powers from the state and local government. In doing so, government agents become unaccountable to people within their jurisdiction resulting in a growing tyranny.

> "In *all* cases where a majority are united by a common interest or passion, the rights of the minority are in danger."[6] "[A] pure democracy…can admit of no cure for the mischiefs of [the majority]…and there is nothing to check the inducements to sacrifice the weaker party. **Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal securities or the right of property; and have in general been as short in their lives as they have been violent in their deaths."** [7]

That we are witnessing this turbulence and contention today should be of grave concern to all Americans and especially Congress. A democracy can provide freedom only *within* a constitutional republic based upon the People's Law. Yet, almost every solution proposed by the environmental lobby is structured around the feudal/ruler form of governance that shifts power to appointed unaccountable regional planning commissions, the state, or federal government. As a consequence, Americans all across this nation have been experiencing a new type of feudal rule.

Reestablishing True Limits to Property Rights

The power to regulate private property rights must be returned to state and local governing units and confined to the strict original concept of common law nuisance and harm backed by empirical, peer-reviewed research. Cross-jurisdictional appointed planning commissions are generally not accountable to the people within their jurisdiction and must be abolished. When in doubt, property rights must take precedence. It is incumbent upon the state to prove its case, not the property owner.

Conversely, public interest environmental laws are based on personal values for the so-called "public good." Like highways, parks, wildlife sanctuaries and other public benefits, they should be subject to the Fifth Amendment requirements of full just compensation. Paying 100% compensation would force prioritization of public benefits, rather than receiving a public benefit at the total expense of the property owner. Making the property owner pay for such public values is comparable to expropriating a person's life saving's to pay for a public good such as reducing the national debt.

Likewise, environmental damage resulting from cumulative effects represent a total societal problem to which all have contributed, so all should bear partial fiscal responsibility. Regulations protecting endangered species and wetlands fall into this category. Compensation from the state is due the landowner when economic loss exceeds a certain percent. Both the property owner and the state would be forced to find creative solutions or alternatives.

The growing tensions and strife caused by the gradual reversion to feudal/ruler governance in America was predicted by our Founding Fathers. It will only get worse unless the process is reversed. The choice is simple, freedom or feudalism. The former will allow us to protect our environment with common sense creativity. The later will strangle our economy so we no longer have the ability to protect either the environment or over 200 years of freedom — taking with it the light and hope of the world provided by the greatest nation on earth.

1. Albert Ellery Bergh, Ed. *The Writings of Thomas Jefferson.* 20 vols. (Washington: Thomas Jefferson Memorial Association). 1907. 15:332
2. John Adams. *Works.* C. Francis Adams, ed. (Little & Brown, Boston). 1854. Vol. 14:560.
3. *4 Letters and Other Writings of James Madison,* 174. Taken from the essay "Property" written in 1792 and published in the *National Gazette*, March 27, 1792.
4. William Blackstone, *Commentaries on the Laws of England.* Ed. William Carey Jones, 2 Vols. (San Francisco; Bancroft-Whitney Company, 1916), 1:54-63.
5. Ibid, pp 93.
6. James Madison, *Notes of debates of the Federal Constitution.* (Bicentennial Edition), 1987. At 76.
7. James Madison, *The Federalist Papers*, 10.21-10.22.